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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER GABRIEL BARAJAS,

Defendant and Appellant.

F069901

(Super. Ct. No. F13909273)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Kimberly A. Gaab, Judge.

C. Matthew Missakian, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Poochigian, J. and Franson, J.

Appellant Peter Gabriel Barajas pled no contest to felony evading an officer (Veh. Code, § 2800.2, subd. (a)), and admitted two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)),<sup>1</sup> and allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On September 28, 2013, at approximately 5:58 p.m., a motorcycle patrol officer in Fresno, California, saw Barajas driving a stolen car. After the officer pulled Barajas over and got off his motorcycle, Barajas sped off in the car. The officer followed with his lights and siren on. However, when Barajas drove through several apartment complexes where children were playing, the officer turned them off and drove at a safe distance. Eventually, Barajas drove the car onto the sidewalk and Barajas and a passenger fled on foot. The officer followed Barajas on his motorcycle and eventually arrested him.

On October 9, 2013, the district attorney filed a complaint charging Barajas with unlawfully driving or taking a vehicle (count 1/Veh. Code, § 10851, subd. (a)), receiving a stolen vehicle (count 2/§ 496d, subd. (a)), misdemeanor evading an officer (count 3/§ 2800.1, subd. (a)), and resisting arrest (count 4/§ 148, subd. (a)(1)), a misdemeanor. The complaint also charged Barajas with two prior prison term enhancements and alleged that Barajas had a prior conviction within the meaning of the three strikes law.

On January 29, 2014, the prosecutor amended count 3 to charge Barajas with felony evading an officer. Barajas then entered his above-noted plea, with a *Cruz*<sup>2</sup> waiver, in exchange for the dismissal of the remaining counts and a stipulated prison term of four years. Barajas's *Cruz* waiver provided he would be allowed to remain out of

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

<sup>2</sup> *People v. Cruz* (1988) 44 Cal.3d 1247.

custody until his sentencing hearing. If Barajas appeared for sentencing, the prosecutor would dismiss the prior prison term enhancements and Barajas would be sentenced to the stipulated four-year term. If Barajas did not appear, he would be sentenced to a stipulated term of eight years.

On April 2, 2014, Barajas failed to appear for sentencing and the court issued a warrant for his arrest.

On August 5, 2014, Barajas appeared in court for sentencing. Prior to the court imposing sentence, defense counsel stated that Barajas indicated he wanted to withdraw his plea but that defense counsel did not see any basis for him to do so. The court then sentenced Barajas to an aggregate eight-year term, the aggravated term of three years on his evading an officer conviction, doubled to six years because of Barajas's prior strike conviction, and two one-year prior prison term enhancements. After the court pronounced sentence, Barajas stated that he was under the influence of heroin "the whole time" he was coming to court, including when he entered his plea, and that he agreed to the plea deal so he could stay out of custody and continue to use heroin.

Later that day, the court recalled Barajas's case. However, it trailed the case to the following day so that Barajas's defense counsel could be present.

The following day, the court construed Barajas's comments from the previous day as a motion to withdraw plea and denied the motion.

Barajas's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Barajas has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

#### **DISPOSITION**

The judgment is affirmed.